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Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER SLATER,

Petitioner,

v.

THE STATE OF NEW JERSEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is an individual's Fourth Amendment right to be free from involuntary searches and seizures violated where the only evidence supporting such search and seizure is an allegation that the vehicle occupied by that individual was poorly parked in the vicinity of a "known prostitute?"

LIST OF PARTIES

Petitioner:

CHRISTOPHER SLATER

Respondent:

STATE OF NEW JERSEY

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	v
TABLE OF APPENDICES	vii
TABLE OF CITED AUTHORITIES	viii
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
Procedural History	2
The New Jersey Supreme Court's Determinations	6
REASONS FOR GRANTING THE PETITION	13

I. REVIEW IS WARRANTED TO CORRECT THE MISAPPLICATION OF THE FOURTH AMENDMENT (AS APPLIED TO THE STATES THROUGH THE FOURTEENTH AMENDMENT) BY THE NEW JERSEY APPELLATE DIVISION IN ITS REVERSAL OF THE OPINION AND ORDER OF THE TRIAL COURT SUPPRESSING EVIDENCE, WHICH COURT FOUND THAT PETITIONER WAS ILLEGALLY DETAINED AND SEARCHED BY NEW JERSEY POLICE OFFICERS WITHOUT THE "REASONABLE SUSPICION" REQUIRED UNDER THIS COURT'S DECISION IN TERRY V. OHIO, 392 U.S. 1 (1968) 13

A THE TRIAL COURT PROPERLY CONSIDERED THE OFFICERS' TRAINING AND EXPERIENCE IN CONDUCTING ITS "TOTALITY OF THE CIRCUMSTANCES ANALYSIS" WHILE DETERMINING WHETHER OR NOT THE POLICE OFFICERS HAD REASONABLE SUSPICION TO CONDUCT AN INVESTIGATORY STOP 24

B THE TRIAL COURT CORRECTLY FOUND THAT THE POLICE OFFICERS, IN LIGHT OF THEIR TRAINING AND EXPERIENCE, AND IN THE TOTALITY OF THE CIRCUMSTANCES, DID NOT HAVE REASONABLE SUSPICION TO CONDUCT AN INVESTIGATORY STOP OF DEFENDANT-PETITIONERS 27

II THIS PETITION SHOULD BE GRANTED BECAUSE THE DECISION OF THE NEW JERSEY APPELLATE DIVISION IS FINAL BY VIRTUE OF THE NEW JERSEY SUPREME COURT'S REFUSAL TO REVIEW SAME, AND PETITIONER'S LIBERTY HAS BEEN ILLEGALLY PLACED IN JEOPARDY THEREBY 36

CONCLUSION 38

TABLE OF APPENDICES

	Page
Appendix A – Order, N.J. Super. Law Div. filed June 18, 2009	1a
Appendix B – Indictment filed November 19, 2008	2a
Appendix C – Transcript dated April 8, 2009	4a
Appendix D – Transcript dated May 27, 2009	51a
Appendix E – Transcript dated May 28, 2009	89a
Appendix F – Slip Opinion, N.J. Super. App. Div. dated May 27, 2010	124a
Appendix G – Order of the New Jersey Supreme Court filed September 23, 2010	139a

TABLE OF CITED AUTHORITIES

	Page
United States Supreme Court Cases	
Adams v. Williams, 407 U.S. 143 (1972)	18
INS v. Delgado, 466 U.S. 210 (1984).	14
Terry v. Ohio, 392 U.S. 1 (1968)	2,3,13, 14,15, 16,19, 20,34, 36,37, 38
United States v. Cortez, 449 U.S. 411 (1981)	15,30
United States v. Mendenhall, 449 U.S. 411 (1981)	14,15, 29
New Jersey Cases	
In re J.G., 320 N.J. Super. 21 (App. Div. 1999).	14
State v. Arthur, 149 N.J. 1 (1997)	23,24, 25,26, 27,28, 29
State v. Citarella, 154 N.J. 272, 279 (1998)	30,32

State v. Davis, 104 N.J. 490 (1986)	14,15, 19,20
State v. Kuhn, 213 N.J.Super. 275 (App. Div. 1986)	33,34, 35,
State v. Pineiro, 181 N.J. 673 (1988)	22,23
State v. Stovall, 170 N.J. 346 (2002)	20,22
State v. Thomas, 110 N.J. 673 (1988)	15,29, 33
State v. Tucker, 136 N.J. 158 (1994)	14

Constitutional Provisions and Statutory Citations

Fourth Amendment to the United States Constitution	*passim*
Fourteenth Amendment to the United States Constitution	*passim*
N.J.S.A. 2C:35-5(b)	4
N.J.S.A. 2C:35-5(b)(2)	4
N.J.S.A. 2C:35-10(a)	4

Petitioner respectfully petitions this Honorable Court for a Writ of Certiorari to the Supreme Court of New Jersey in State v. Slater and Lane, N.J. Supreme Court M-37 September Term 2010 066305 (September 23, 2010).

OPINIONS BELOW

The Opinion and Order of the New Jersey Appellate Division reversing the order of the trial court were unpublished[1], as was the order New Jersey Supreme Court denying Petitioner's Motion for leave to appeal. The operative documents are appended hereto as Appendix "F" (124a) and Appendix "G" (139a), respectively.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

The New Jersey Supreme Court's September 23, 2010 Order denying review in this matter is final as to the New Jersey Appellate Division's

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[1] See http://lawlibrary.rutgers.edu/courts/appellate/a5857-08.opn.html (consulted 12/19/10).

reversal of the trial court's order and opinion suppressing evidence in this case as the fruits of an illegal search and seizure under the Fourth Amendment to the United States Constitution.

The said orders and decision of the said New Jersey appellate courts are repugnant to the Fourth Amendment to the United States Constitution as applied to the states through the Fourteenth Amendment, because said orders and decision purport to grant to the state unprecedented police powers to stop and search citizens without reasonable suspicion, all in violation of this Court's mandate in Terry v. Ohio, 392 U.S. 1 (1968), and its progeny.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution states as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,

> shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S.C.A. Const. Amend. IV-Search and Seizure

The Fourth Amendment is made applicable to states by the Fourteenth Amendment. E.g. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

STATEMENT OF THE CASE

1. Procedural History

On April 30, 2008, Robert Lane and Christopher Slater were arrested and charged by way of complaint with possession of controlled, dangerous substances (hereinafter "CDS"), with intent to distribute same, following an investigatory stop in the Maurice View Plaza parking lot, Millville, New

Jersey. In a three-count indictment dated November 19, 2008, Defendant-Petitioner Slater was charged with Third-Degree Possession of CDS, N.J.S.A. 2C:35-10(a), Second-Degree Possession of CDS with Intent to Distribute, N.J.S.A. 2C:35-5(b), and Second Degree Conspiracy, N.J.S.A. 2C:35-5(b)(2).

A suppression hearing was held on April 8, May 27, and May 28, 2009 before the Honorable Robert P. Becker, Jr., J.S.C. On May 28, 2009, Judge Becker entered an oral opinion granting the Motion to Suppress Evidence, and entered, on June 17, 2009, an Order suppressing all of the contraband and statements taken from Defendant-Petitioners and their vehicle.

The State moved for leave to appeal the suppression order on July 7, 2009, which motion was granted by the New Jersey Superior Court, Appellate Division on July 30, 2009. On or about August 20, 2009, Petitioner Christopher Slater filed a Motion for Reconsideration of the Order granting leave to appeal. Reconsideration was granted but the Order granting leave to appeal was affirmed.

On May 10, 2010, the Honorable Judges Reisner, Yannotti, and

Chambers of the New Jersey Superior Court, Appellate Division, heard oral argument in the matter.

On May 27, 2010, the said Judges of the Appellate Division issued an order and opinion reversing the suppression order of the trial court, stating that the police officers who stopped Defendants Slater and Lane were justified in doing so based upon their observations that:

> [Defendants] slowed down as they passed [a "known" prostitute] and blinked the brake lights; they circled the block twice, passing [the alleged prostitute] both times; they then pulled into a parking lot...and drove across the lot so that their car was facing the corner of Columbia where [the alleged prostitute] was standing. Instead of parking in a stall, [Defendants] parked sloppily at an angle across a stall. The [alleged prostitute] then left her corner and headed across the street toward defendants' car.

State v. Slater and Lane, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11-12).

On or about June 11, 2010, Defendant-Petitioner Slater, through his counsel, filed a Notice of Motion for Leave to Appeal the May 27, 2010 Decision and Order of the Appellate Division. On September 23, 2010, the New Jersey Supreme Court entered an order denying Petitioner's motion for leave to appeal, leaving the Appellate Division's opinion and order intact and rendering it "final" for purposes of the herein Petition.

2. Statement of Facts and of the New Jersey Courts' Determination

On Wednesday, April 30, 2008, at approximately 11:34 p.m., Defendant-Petitioner Christopher Slater and Defendant Robert Lane were arrested for possession of alleged controlled, dangerous substances (hereinafter "CDS") by the members of the Millville, New Jersey, Police Department. Detective Harold Duffield testified at the suppression hearing that he, Detective-Sergeant Jodi Farabella, and Detective Joseph Hoydis, were parked in their police vehicle near the intersection of Columbia and Vine Streets, Millville,

New Jersey. (1T10-18 to 19).[2] They were watching an African-American female named Mary Bowen, believed by the officers to have engaged in past acts of prostitution. (1T11-19 to 12-5).

Duffield testified that the driver of a black sedan, (ultimately identified as Robert Lane), decelerated the vehicle, applied the brakes, circled the block, and pulled into a parking lot near the officers' location. (1T14-7 to 15). Although Duffield stated that he could see the black sedan clearly, he claimed he could not make out the race or gender of the driver or passenger (ultimately identified as Defendant-Petitioner Christopher Slater). (1T32-16 to 33-7). Duffield stated that he observed Mary Bowen begin to walk toward the subject vehicle.

At that point, without further evidence of suspicious activity, the officers pulled their police cruiser directly behind the subject vehicle, boxing it in, and then approached the vehicle on foot, with their service weapons and badges clearly visible. (1T84-11 to 85-1) (3T17-8 to 9). Upon cross-examination by undersigned

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[2] "1T" refers to the transcript dated April 8, 2007 (Appendix "C", at 4a-50a); "2T" refers to the transcript dated May 27, 2009 (Appendix "D", at 51a-88a); "3T" refers to the transcript dated May 28, 2009 (Appendix "E", at 89a-123a).

counsel, Detective Duffield summarized the evidence that he considered in choosing to stop Defendants Slater and Lane:

> Q: Is it fair to say, the only indication that you had that there was some sort of prostitution transaction going on [was] that some brake lights would flash and the subject vehicle pulled into a parking spot?
>
> A: That would be fair to say.

(1T34-18 to 23)

Detective Farabella gave similar testimony when the undersigned cross-examined him on the issue of reasonable suspicion:

> Q: You testified earlier that you circled around Mary Bowen. You also testified earlier that one of the facts that you consider in identifying potential johns, the Defendants, was that they circled Mary Bowen ... [m]y suggestion is and my question is, the only

> thing that indicated to you that these guys were looking for a prostitute was the fact that they tapped their brake light? Is that correct?
>
> A: And circling twice.
>
> Q: Okay. So they circled one more time than you did and tapped their brake?
>
> A: Correct.
>
> Q: And that's it; right?
>
> A: That's all I needed to see or observe.

(3T19-23 to 20-11).

Duffield admitted that when he and his team stopped Defendant-Petitioners' vehicle, he parked his police car in such a way as to prevent the subject vehicle from leaving the scene. (2T47-13 to 48-1).

Also, the following exchange occurred between undersigned counsel and Officer Farabella on cross-examination:

> Q: Okay. And it [the police vehicle] was close enough where Mr. Lane was not going

to be able to back out
or – and leave.
Is that right?

A: That's correct.

(3T23-23 to 26).

Shortly after pulling behind the subject vehicle, Duffield approached the front driver's side and began to question Robert Lane. (1T15-4 to 12). Duffield testified that he was unsure if he would have let Slater and Lane leave if they had refused to answer his initial questions. (2T28-23 to 29-2). Lane was asked if he was attempting to "pick up" Mary Bowen, to which he replied, no, that he had dropped his cell phone, and had pulled over to retrieve it. (1T15-15 to 24). At this point, Mary Bowen was, according to Duffield, approximately fifteen feet away from the subject vehicle. (1T30-5 to 8).

Duffield testified that after speaking to Robert Lane for three to five minutes, he detected a "strong odor of raw marijuana coming from inside the vehicle" (3T54-5 to 13). In the meantime, another police unit arrived on the scene, Officer Jason Vinzinski. (1T38-2 to 11). Vinzinski ordered passenger Christopher Slater out of the vehicle, while Duffield extracted Lane. (1T18-23 to 25).

At the time Duffield initiated the conversation with Robert Lane there were two armed officers on the passenger side of the subject vehicle, and a fourth had stopped Mary Bowen (2T24-2 to 25-16). Duffield was the only officer to smell the raw marijuana during the interrogation, and he could not recall whether he requested Robert Lane to exit the subject vehicle before or after telling the other officers about the smell (2T26-6 to 27-8).

It was only after removing both occupants from the vehicle that the arresting officers saw suspected cocaine inside the vehicle (1T19-1 to 6). The marijuana allegedly "detected" by Duffield was recovered inside a plastic bag from the pocket of a jacket worn by Christopher Slater, but later attributed to Robert Lane in statements provided by each while in custody at police headquarters.

On January 6, 2009, Investigator Del Cassidy of the New Jersey Office of the Public Defender, at the undersigned's request, conducted a surveillance of the parking lot where defendants had been seized. Investigator Cassidy determined that the "Maurice View" parking lot was used by residents of the surrounding neighborhood for overnight parking. Investigator Cassidy's report was

admitted into the record by stipulation of the parties.

Duffield admitted that he was aware that nearby residents regularly utilized the "Maurice View" lot for overnight parking, in accord with Investigator Cassidy's findings (1T76-18 to 23). Interestingly, Robert Lane in fact lived in a house nearby.

Testimony in the suppression hearing concluded on May 28, 2009, and Judge Becker granted Defendant-Petitioners' Motion to Suppress that same day by way of an oral decision. He found that a reasonable actor in the Defendant-Petitioners' situation—inside a vehicle, boxed-in by a second (police) vehicle, and surrounded by three armed police officers, would not have felt free to leave. Thus, he found that Slater and Lane were subjected to an investigatory stop. Significantly, Judge Becker made this ruling after having found that each of the State's witnesses, Officers Duffield and Farabella, had offered fully credible testimony.

Although the State in its trial brief opposing suppression, abandoned any argument that the encounter was a mere "field inquiry," Judge Becker specifically ruled that the encounter was indeed not a properly initiated field inquiry (3T60-1).

Furthermore, Judge Becker concluded that the officers did not have "reasonable suspicion" under Terry v. Ohio, 392 U.S. 1, (hereinafter "Terry") and its progeny, to justify an investigatory stop, and ordered the evidence obtained thereby, most notably the alleged CDS, suppressed (3T64-11 to 17).

Judge Becker also found that since the investigatory stop was illegal, the plain view exception did not apply, as the officers were not lawfully in area from which they perceived CDS (3T65-15 to 20).

Judge Becker noted, parenthetically, that he was puzzled as to why the officers, who testified that they were investigating a suspected sex transaction, did not wait until Mary Bowen approached the car before moving in (3T64-2 to 6), and also found it significant that there was never any evidence of Bowen communicating to Slater and Lane (3T64-4 to 6 and 1T72-1 to 16).

REASONS FOR GRANTING THE PETITION

I. REVIEW IS WARRANTED TO CORRECT THE MISAPPLICATION OF THE FOURTH AMENDMENT (AS APPLIED TO THE STATES THROUGH THE FOURTEENTH AMENDMENT) BY THE NEW JERSEY APPELLATE

DIVISION IN ITS REVERSAL OF THE OPINION AND ORDER OF THE TRIAL COURT SUPPRESSING EVIDENCE, WHICH COURT FOUND THAT PETITIONER WAS ILLEGALLY DETAINED AND SEARCHED BY NEW JERSEY POLICE OFFICERS WITHOUT THE "REASONABLE SUSPICION" REQUIRED UNDER THIS COURT'S DECISION IN TERRY V. OHIO, 392 U.S. 1 (1968).

This Honorable Court has determined that when the police restrain a person's freedom to walk away, they have seized that person under our state and federal constitutions. Terry v. Ohio, 392 U.S. 1 (1968) (hereinafter "Terry"); accord State v. Davis, 104 N.J. 490, 498 (1986).

Whether a seizure has occurred is determined from the defendant's perspective, State v. Tucker, 136 N.J. 158, 165-166 (1994), and the key is whether a reasonable person in the defendant's position would have believed that he was free to walk away from the officer without answering any questions. State in the Interest of J.G., 320 N.J. Super. 21, 31 (App. Div. 1999); State v. Davis, supra, 104 N.J. 490 at 498 (quoting INS v. Delgado, 466 U.S. 210, 215, 104 S.Ct. 1758, 1762, 80 L.Ed.2d 247, 255 (1984); United States v. Mendenhall, 466 U.S. 544, 554, 100

S.Ct. 1870, 1877, 64 L.Ed.2d 497, 509 (1980) ("[A]n initially consensual encounter between a police officer and a citizen can be transformed into a seizure . . . if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.")).

The police may not constitutionally seize a person without a "particularized and objective basis for suspecting the particular person stopped of criminal activity" derived from the "totality of the circumstances" of the encounter. United States v. Mendenhall, supra, at 501 (quoting United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 694-95, 66 L.Ed.2d 621, 628-29 (1981)).

In Terry, supra, and its progeny, this Court narrowly defined the prerequisite for police invasion of citizens' Fourth Amendment rights in the absence of probable cause. In State v. Thomas, 110 N.J. 673 (1988) (hereinafter "Thomas"), the New Jersey Supreme Court reiterated the narrow constraints of Terry.

Terry, as construed by Thomas, demands that the State prove that the officer, in the totality of the circumstances, had "a particularized

and objective basis" for believing that the suspect was involved in criminal activity, in order to justify a stop. State v. Thomas, supra, 110 N.J. at 678. The officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." Id. at 678 (quoting Terry v. Ohio, supra, 392 U.S. at 21, 88 S.Ct. at 1879). The New Jersey court later stated that an officer's reasonable suspicion "involves something less than the probable cause standard needed to support an arrest." Id. at 678.

The Honorable Judges of the New Jersey Appellate Division have made a mockery of Terry, supra, and its progeny, finding, in a decision which it prefers not to publish, that citizens may be seized merely for parking, albeit badly, in an area frequented by alleged prostitutes:

> [Defendants] slowed down as they passed [a "known" prostitute] and blinked the brake lights; they circled the block twice, passing [the alleged prostitute] both times; they then pulled into a parking lot...and drove across the lot so that their car

> was facing the corner of Columbia where [the alleged prostitute] was standing. Instead of parking in a stall, [Defendants] parked sloppily at an angle across a stall. The [alleged prostitute] then left her corner and headed across the street toward defendants' car.

State v. Slater and Lane, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11-12).

By the Appellate Division's account of the facts, Defendant-Petitioners deserved to be stopped by police because they badly parked their vehicle in an area frequented by a known prostitute. There is no federal or New Jersey case which provides such broad powers to police.

Astoundingly, the Appellate Division supported its conclusion that officers had reasonable suspicion in this case with the following patently ridiculous statement: "There was no objectively observable legitimate reason for [Defendant Lane] to tap [his] brake lights just as the car passed the prostitute, or for [Defendants'] car to circle the block

twice in the middle of the night." Ibid. The Honorable Judges of the Appellate Division failed to explain how these allegedly suspicious acts differ from the behavior of an innocent driver seeking and finding a parking spot, or how "tapping" one's brakes differs, or is more suspicious, than applying one's brakes in the normal course of driving.

Moreover, the cases cited by the Appellate Division in its opinion simply do not support that court's conclusion that the police had reasonable suspicion to stop Defendant-Petitioners. See State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11-12).

In Adams v. Williams, 407 U.S. 143, 145-46, 92 S. Ct. 1921, 1923, 32 L. Ed. 2d 612, 616-17 (1972), see State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 12), a police officer acting on a tip supplied moments earlier *by an informant known to him*, asked the defendant to open his car door. Adams v. Williams, supra, 407 U.S. at 145-146, 92 S. Ct. at 1923, 32 L. Ed. 2d at 616-617 (1972). The defendant lowered the window, and the officer reached into the car and found a loaded handgun (which had not been visible from the outside), in the

defendant's waistband, precisely where the informant said it would be. Ibid. Petitioner was then arrested for unlawful possession of the handgun. Ibid.

The Appellate Division also relied heavily upon State v. Davis, 104 N.J. 490 (1986) (hereinafter "Davis"), to support its conclusion that the police had reasonable suspicion to stop Defendants. See State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 13). In Davis, supra, the police were responding "to a radio dispatch from a credible informer." Davis, supra, 104 N.J. at 506 (1986). The New Jersey Supreme Court, in accord with this Court's decision in Terry, supra, found that reasonable suspicion existed in Davis because:

> the informer [was] more than the ordinary citizen—he [was] a member of the Springfield First Aid Squad, an individual who, while not part of the government, [was] more involved and presumably more public spirited than the average citizen. The police could therefore rely on him as a

> credible source of information.

State v. Davis, 104 N.J. 490, 506, 517 A.2d 859, 868 (1986).

Similarly, in State v. Stovall, 170 N.J. 346, 370, 788 A.2d 746, 760 (2002), see State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 13), the lynchpin of the New Jersey court's finding of reasonable suspicion is the fact that a *credible informant* has fingered the defendant—but there are numerous additional facts justifying the stop:

> Detective Benoit had reasonable suspicion to stop defendant based on the following circumstances: the information relayed from the ticket agent and Agent Cahill to Detective Benoit; Benoit's confirmation of that information; Agent Cahill's description of defendant's identification as "fraudulent"; Benoit's independent determination that the identification was questionable because

defendant's only form of identification was an expired identification card listing an address on Main Street in Los Angeles; defendant's flight originating in Los Angeles and arriving in Newark-a known drug trafficking route; defendant's ticket being purchased at the same time and from the same agency as the other suspect's ticket, but the two women traveling separately and appearing not to know one another; the "bulk" ticket; defendant's ticket being purchased from a travel agency frequently used by narcotics traffickers; defendant's small, carry-on "crew-type" bag; defendant's visible nervousness; and Detective Benoit's extensive experience and expertise in the narcotics interdiction field.

State v. Stovall, supra, 170 N.J. 346, 370, 788 A.2d 746, 760 (2002).

Here, there was no informant's tip, credible or not, that Defendants would be soliciting prostitution on the corner occupied by Mary Bowen, an alleged prostitute.

Finally, the Appellate Division's references to the New Jersey Supreme Court's decision in State v. Pineiro, 181 N.J. 13, 25, 853 A.2d 887, 894 (2004)(hereinafter "Pineiro") are similarly misplaced.

In Pineiro, the court found that the police had reasonable suspicion to conduct an investigatory stop in a high drug, high crime area because (1) the officer observed the defendant give the codefendant a pack of cigarettes while they were standing on street corner; (2) the officer was aware that drugs sometimes were transported in cigarette packs; (3) the officer was familiar with the defendant from having "cleared him off the corners" in the same area; (4) the officer had received intelligence reports that identified defendant as a suspected drug dealer; (5) the officer was aware that the codefendant had been involved with illicit drugs and that the officer previously had arrested him, and (6) both defendant and codefendant immediately departed

area upon seeing officer. State v. Pineiro, supra, 181 N.J. 13, 25, 853 A.2d 887, 894 (2004).

Here, the police did not know the Defendants from Adam, they observed no transfer of money or drugs, they had no informant's tip, and Defendants made no attempt to flee.

Thus, the Appellate Division approaches absurdity in citing Pineiro to support its conclusion that "as a matter of law, what Duffield and Farabella observed gave rise to a reasonable and articulable suspicion that a crime was about to occur, and hence justified an investigatory stop." State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 13).

A. THE TRIAL COURT PROPERLY CONSIDERED THE OFFICERS' TRAINING AND EXPERIENCE IN CONDUCTING ITS "TOTALITY OF THE CIRCUMSTANCES ANALYSIS" WHILE DETERMINING WHETHER OR NOT THE POLICE OFFICERS HAD REASONABLE SUSPICION TO CONDUCT AN INVESTIGATORY STOP.

On appeal, the State relied upon the case of State v. Arthur, 149 N.J. 1 (1997)(hereinafter "Arthur"), to support its allegation that the trial

court failed to take into account the officers' training, experience, and knowledge, in seizing Christopher Slater and Robert Lane, and the Appellate Division apparently agreed. See State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11) (citing Arthur, supra, 149 N.J. at 8 (1997).

The record supports neither the State's argument nor the opinion of the Appellate Division. Judge Becker heard extensive testimony regarding the experience, knowledge, and training of Detectives Duffield and Farabella in the detection of prostitution-related crimes. The Judge found this testimony "extremely credible" (3T51-20 to 25). After judging the officers to be honest and credible witnesses, Judge Becker found that "[the] facts are not sufficiently specific and articulable to support a finding that the officers believed that criminal activity was afoot and [acted] reasonabl[y] under the totality of the circumstances" (3T63-25 to 64-1).

The State also relied upon Arthur to support the proposition that Judge Becker did not give proper "weight" to the experience of the officers in the instant case. Upon even a cursory reading of Arthur, however, it should be readily

apparent that the officer's training and experience in the instant case received all the weight that it deserved, and perhaps more.

The officer that called for the investigatory stop in Arthur had witnessed over "1,000 narcotics transactions." Id. at 4-5. In the present case, Duffield had participated in "five to eight" prostitution investigations (1T7-24 to 8-2), and Farabella had participated in "over ten" prostitution investigations at the time of the incident (3T9-16 to 21). The disparity in experience of the arresting officers in Arthur and the arresting officers in the instant case is incredible. Expressed as a percentage, Officers Duffield and Farabella had only 1% of the experience attributed to the arresting officer in Arthur.

The relative lack of experience in detecting prostitution-related crimes admitted to by the officers in the instant case, supports Judge Becker's finding that the State failed to provide an adequate explanation as to why the detectives did not wait until Ms. Bowen approached the subject vehicle (3T64-2 to 6). This is because more experienced officers would have waited until Mary Bowen, a suspected prostitute, approached the vehicle occupied by suspected "Johns",

thereby allowing money to change hands or sexual contact to actually occur.

It is almost self-evident that the "police do not have to wait for a crime to occur before making an investigatory stop." State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11) (citing Arthur, supra, 149 N.J. at 8 (1997). If consummation of the criminal act were required in all seizures, there would be point to having any evidentiary standard less than probable cause. In the Appellate Division's view, however, there is no standard—the State is permitted to stop and interrogate its citizens based on purely subjective speculation—as is the case here.

In summation, Judge Becker properly considered and weighed the arresting officers' prior experience and knowledge in prostitution stings, which was miniscule, and correctly found that the investigatory stop was improper.[3] The Appellate Division's overruling of Judge Becker's findings

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[3] It is believed by undersigned counsel that Judge Becker, before becoming a Superior Court Judge in the Law Division, was a long-time New Jersey State Police Officer, making him particularly suited to deal the fact-intensive legal question of whether or not police had reasonable suspicion to stop Defendants.

thus constituted clear error, and its Order must be reversed.

B. THE TRIAL COURT CORRECTLY FOUND THAT THE POLICE OFFICERS, IN LIGHT OF THEIR TRAINING AND EXPERIENCE, AND IN THE TOTALITY OF THE CIRCUMSTANCES, DID NOT HAVE REASONABLE SUSPICION TO CONDUCT AN INVESTIGATORY STOP OF DEFENDANT-PETITIONERS.

On appeal, the State relied primarily on State v. Arthur, supra, to support its proposition that the officers in this case had reasonable suspicion to stop Christopher Slater and Robert Lane. However, the evidence known to the officers in Arthur was significantly more particularized, more suspicious, and of greater magnitude and quantity than what the officers had here.

According to the Court, the officer in Arthur:

> "perceived that (1) defendant drove his automobile into and parked on the street in an area known for high levels of narcotics activity; (2) [the suspected buyer] entered defendant's

> car, remained there for a short period of time engaged in conversation with defendant, and exited the vehicle carrying a paper bag she had not possessed when she entered the car; (3) defendant immediately drove off after [the suspected buyer] exited the vehicle; (4) paper bags are often used to transport drugs...and (5) Walls engaged in furtive movements upon exiting the vehicle and tried to conceal the bag that she had obtained from defendant.

State v. Arthur, supra, 149 N.J. at 10.

There having existed no non-speculative, non-criminal explanation for the observed behavior, the officers were justified in stopping the defendant. Id. at 11-12.

In this case, the only evidence known to the officers that an illegal sex transaction was about to occur was that (1) a vehicle circled the block, (2) the driver of that vehicle apparently applied his or her brakes

(as the brake lights were said to have illuminated) and (3) the driver pulled into a parking lot.[4] Although a "known prostitute" was moving towards the vehicle, she never got within fifteen feet of that vehicle, and there's no indication that the occupants in the vehicle were even aware of her presence (1T13-22 to 14-6).

Consequently, Judge Becker correctly reasoned that these three facts did not provide the arresting officers with a "specific and particularized basis for an objectively reasonable suspicion," State v. Thomas, supra, 110 N.J. at 683, that a crime was underway.

The allegedly "suspicious" activities cited by the State are easily attributed to the acts of an innocent person parking his car. It is self-evident that very act of navigating into a parking space, or simply making a turn, requires application of one's brakes. There being no specific, particular, or articulable evidence that Slater and Lane were about to engage in any criminal act, especially as distinguished from Mary Bowen, the Order of the Appellate Division must be reversed. See United States v. Mendenhall, supra, at 501 (quoting

[4] The Appellate Division was also impressed by the fact that Defendant Lane is, apparently, a sloppy parker. See State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 12).

United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 694-95, 66 L.Ed.2d 621, 628-29 (1981)(police may not constitutionally seize a person without a "particularized and objective basis for suspecting the particular person stopped of criminal activity," derived from the "totality of the circumstances" of the encounter)(emphasis added)).

Thus, while there may have been reasonable suspicion to stop *Mary Bowen*, there is no evidence tying this "known prostitute" to Defendant-Petitioners, and there was no legal basis for their seizure.

On appeal, the State cited the New Jersey Supreme Court's decision in State v. Citarella, 154 N.J. 272, 279 (1998) (hereinafter "Citarella") in an attempt to bolster its argument that Judge Becker did not give sufficient weight to the arresting officers' training and experience in addressing the reasonable suspicion issue, and the Appellate Division references Citarella in its opinion. See State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11). However, Citarella actually highlights the illegality of the seizure at issue here. In Citarella the facts warranting reasonable suspicion included:

[defendant] riding over the George Washington Bridge by bicycle; riding in a hurried fashion; putting his bicycle into the back of a pickup truck not owned by Citarella or a member of his family; acting as if he wanted to leave the area quickly in that truck; and acting nervously. Based on his experience as a police officer, Ross also knew the following information: bicycles were often used for the transport of drugs from New York City into Fort Lee; there had been a rash of burglaries in the area; Citarella had been arrested many times before for drug crimes; Citarella had never been seen riding a bicycle previously; Citarella lived two miles from the area in the opposite direction than that in which he was riding; and Citarella's driving privileges had been suspended.

State v. Citarella, 154 N.J. 272, 280 (1998).

In the case at bar, Duffield testified that the only indication of a possible sex-for-money transaction was the flashing of brake lights and the vehicle having pulled around the block into a parking lot (1T34-18 to 23). Furthermore, Duffield was aware that the parking lot used by Defendant-Petitioners that night was typically used by neighborhood residents for overnight parking (1T41-1 to 5).

Perhaps more significantly, Robert Lane gave a perfectly innocent explanation for braking and pulling into the parking lot, having stated to Duffield, before any contraband was detected, that he had dropped his cellular phone, and sought to safely retrieve it. Moreover, Duffield admitted that prostitutes will often approach parked vehicles to solicit sex even if no "signals" are given, and thereby nullified the approach of Mary Bowen as a fact supporting reasonable suspicion (2T55-22 to 56-7).

Clearly, the officers in Citarella had much more evidence of criminality than those who seized Slater and Lane, and Citarella is therefore not controlling.

A New Jersey case more factually analogous to the case at bar is State v. Kuhn, 213 N.J.Super. 275 (App. Div. 1986) (hereinafter "Kuhn"). In Kuhn, a police officer experienced in detecting narcotics transactions observed a car parked in a high-crime area (as here within a parking lot), while two individuals were standing outside the vehicle on each side of the car, and a third was seated in the passenger seat. The officer, believing he was viewing a narcotics transaction, conducted a Terry-Thomas level seizure of the defendant. Although the officer testified that narcotics transactions are usually arranged in this set up (i.e., a man in the passenger seat with two others on each side of the vehicle), the court found that the seizure was illegal, stating:

> It may be that in an area such as the one described by the officer, in some percentage of cases when any group of three is seen, narcotics will be found if the three are searched; but the law does not permit a search of all such individuals merely because there will be a

> high incidence of contraband being found in their possession. There must be particularized suspicion.

Id. at 281-282 (emphasis added).

Thus, in Kuhn, despite the arresting officer's substantial experience in detecting narcotics crime, and the location of the stop having been a "high crime" area, the court found the facts did not rise to the level necessary to support reasonable suspicion. Id. at 282. This was because there was no traffic violation; the officer observed no narcotics and no money changing hands; there had been no report of recent crime nearby; the defendant and his companions fit no description of suspects in recent crime; there were no potential or likely victims of crimes observed nearby; there had been no informant's tip that crime or drug transaction was about to occur; and the defendant's vehicle matched no description of any vehicle reportedly involved in a crime. Id. at 280-283

Here, as in Kuhn, none of the typical indicators of illegal activity are present. Here as in Kuhn, the State relies primarily on the alleged

illegal transaction having occurred in a high-crime area, and to have been observed by a police officer allegedly trained and experienced in identifying such transactions. Here, as in Kuhn, these facts are not enough to justify a Terry-Thomas level seizure. Moreover, the officer's experience in Kuhn was given substantial weight, because the evidence revealed that the officer had conducted over fifty narcotics arrests. Id. at 163. Thus, the officer in Kuhn was *approximately ten times more experienced* than the officers in the case at bar, and this was *still* insufficient, in the court's view, to establish reasonable suspicion.

As did the court in Kuhn, Judge Becker properly weighed and considered the officers' experience and training before concluding that there was insufficient evidence to support an investigatory stop of Christopher Slater and Robert Lane. Because the State's arguments are not supported by the record, the Order of the Appellate Division reversing Judge Becker's suppression order must be reversed.

II. THIS PETITION SHOULD BE GRANTED BECAUSE THE DECISION OF THE NEW JERSEY APPELLATE DIVISION IS FINAL BY VIRTUE OF THE NEW JERSEY SUPREME COURT'S REFUSAL TO REVIEW SAME, AND PETITIONER'S LIBERTY HAS BEEN ILLEGALLY PLACED IN JEOPARDY THEREBY.

The New Jersey Supreme Court has declined to review the order and opinion of the New Jersey Appellate Division reversing the trial court's suppression order in this matter. The September 23, 2010 Order and Opinion of the New Jersey Supreme Court are therefore final for purposes of this Petition.

For all the reasons stated above, the Appellate Division's said Order and Opinion were entered in violation of Petitioner's right to be free of reasonable searches and seizures vested in him by virtue of the Fourth Amendment and this Honorable Court's opinion in Terry v. Ohio, supra, 392 U.S. 1 (1968) and its progeny.

Said Order and Opinion of the Appellate Division have wrongfully and illegally placed Petitioner's liberty in jeopardy, as his matter has now been remanded to the trial court for further prosecution.

No purpose can be served in subjecting Petitioner to trial, as the said Order and Opinion of the New Jersey Appellate Division are clearly in error, and shall be reversed on appeal if Petitioner is convicted.

III. CONCLUSION

The decision and order of the Appellate Division reversing Judge Becker's suppression order must therefore be reversed as clearly erroneous, and in violation of this Court's Fourth Amendment jurisprudence under Terry v. Ohio, supra, 392 U.S. 1 (1968).

The record admits of no legal basis for the Appellate Division's overturning the decision and order of the trial court suppressing physical and testimonial evidence due to the State's violation of Defendant-Petitioner's right to be secure in his person and possessions.

The record includes extensive testimony from the police officers involved in this case about their experience and knowledge in detecting prostitution-related crimes, and Judge Becker properly weighed that

experience and knowledge in light of the totality of the circumstances.

The record also clearly supports Judge Becker's conclusion that the officers did not have reasonable suspicion to stop Slater and Lane, and that their seizure was therefore illegal.

The decision and order of the Appellate Division reversing Judge Becker's suppression order must itself therefore be reversed as clearly erroneous, and in violation of this Court's Fourth Amendment jurisprudence under Terry v. Ohio, supra, 392 U.S. 1 (1968) and its progeny. Petitioner therefore requests that this Honorable Court grant his herein Petition.

Respectfully submitted,

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Dated: December 20, 2010